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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/069,892      | 02/27/2002  | Bernhard Fischer     | PHD 99,207          | 5207             |

7590

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EXAMINER

LAUCHMAN, LAYLA G

ART UNIT PAPER NUMBER

2877

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/069,892

Applicant(s)

FISCHER, BERNHARD

Examiner

L. G. Lauchman

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 4-6, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It is not clear how the limitation following the phrase "preferably" sets forth the metes and bounds of the claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Wagenen et al (4,784,486).

As to Claim 1, the patent '486 teaches a system for avoiding poisoning effects during anesthesia (col. 1, lines 14-17; col. 5, lines 1-15), comprising:

determining means (Fig. 2) for determining the quantitative amount of the anesthetic agent degradation product in an anesthetic gas mixture (col. 17, lines, 6-8);

alarm means for providing an alarm when the determined quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold (col. 20, lines 26-46).

As to Claim 2, the patent '486 teaches everything as applied to Claim 1, and in addition: measuring means for measuring a Raman spectrum of the gas mixture and a processing unit for determining the quantitative amount of the anesthetic agent in the gas mixture by comparing the measured Raman spectrum with a reference spectrum of the anesthetic agent (see Col. 17, lines 9-57).

As to Claim 3, the patent '486 teaches everything as applied to Claim 1, wherein the anesthetic agent is carbon monoxide CO.

As to Claim 4, the patent '486 teaches everything as applied to Claim 1. The patent does not disclose trifluoromethane as the anesthetic agent, however it would be an inherent feature, because trifluoromethane is a break down product of desflurane, which form carbon monoxide by reacting with carbon dioxide absorbers (see attached article by Kronen). Therefore, it is inherent to have trifluoromethane as the anesthetic agent degradation product.

As to Claim 5, the patent '486 teaches a system, comprising :

means for measuring a Raman spectrum of the gas mixture (see Col. 17, lines 9-57);

a processing unit for determining the quantitative amount of at least one of the anesthetic agents degradation products, CO, in the gas mixture by comparing the measured Raman spectrum with a reference spectrum (see Col. 17, lines 9-57);

means for providing an alarm when the determined quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold (col. 20, lines 26-46).

As to Claim 6, the patent '486 teaches a method, comprising

(a) determining the quantitative amount of at least one of the anesthetic agents degradation products, CO, in the gas mixture;

(b) providing an alarm when the determined quantitative amount of the anesthetic agent degradation product in the anesthetic gas mixture exceeds a given threshold (col. 20, lines 26-46).

As to Claim 7, the patent '486 teaches everything as applied to Claim 6, wherein step (b) comprises:

(c) measuring a Raman spectrum of the gas mixture,

(d) determining the quantitative amount of the anesthetic agent in the gas mixture by comparing the measured Raman spectrum with a reference spectrum of the anesthetic agent (see Col. 17, lines 9-57).

As to Claim 8, the patent '486 teaches use of a Raman spectrometer (Fig. 2) for determining the quantitative amount of an anesthetic agent product in a gas mixture (col. 4, lines 47-68, and col. 5, lines 1-63).

### ***Conclusion***

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice

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published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703) 872-9306.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

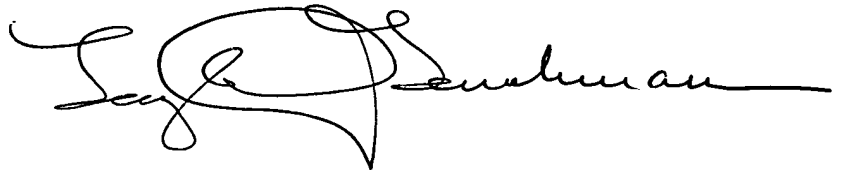
a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and

b) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-2418.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read 'L. G. Lauchman', with a stylized, cursive script.

L. G. Lauchman  
Patent Examiner  
Art Unit 2877  
2/22/04/lgl